

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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It may be possible that the provision that requires the calculation of the amount to be paid by a violator of the trespass law is in violation of art. X, sec. 2, of the state constitution, which requires forfeitures to be deposited into the school fund. A lower percentage of the total amount going into the conservation fund *may* support the position that the provision does not violate the constitution. Also, it may be constitutionally required that the amount of the surcharge not exceed the cost of prosecuting the trespass violation.

In light of this, if you prefer to set up a calculation that is similar to provisions under current law that have not been challenged as violating the state constitution, you should note the following:

1. Provisions where the surcharge is a percentage of the forfeiture, which ranges from 10 percent to 75 percent: ss. 29.987 (1) (a), 167.31 (5) (a), 299.93 (1), and 757.05 (1) (a).
2. Provisions where the surcharge is a set amount: ss. 29.983 (1) (a), 29.989 (1) (a), 167.55 (1) (a), 350.115 (1) (a).
3. A provision where the surcharge represents a cost to the state: ss. 29.985 (1).
4. A provision where the surcharge is a percentage or amount, whichever is greater: 304.26 (1) (a).

Mary Gibson-Glass
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